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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DALE C. SPRUILL,

Plaintiff,

-v-

MICHAEL J. ASTRUE, Commissioner of Social
Security,¹

Defendant.

No. 06-CV-5762 (KMK) (GAY)

ORDER ADOPTING REPORT
AND RECOMMENDATION

KENNETH M. KARAS, District Judge:

Dale C. Spruill ("Plaintiff") brings this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of the Commissioner of Social Security's decision to deny her disability insurance benefits. Before this Court are the Parties' cross-motions for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). Judge Colleen McMahon, who was originally assigned to this case,² referred the case to Magistrate Judge George A. Yanthis. On June 20, 2008, Magistrate Judge Yanthis filed a Report and Recommendation ("R&R") recommending that this Court deny Plaintiff's motion for judgment on the pleadings and grant the Commissioner's cross-motion for judgment on the pleadings. (R&R 8.) Magistrate Judge Yanthis concluded that the administrative law judge ("ALJ") was not required, pursuant to his duty to develop the record, to re-contact Plaintiff's treating physician (*id.* 5-6); and that, in light

¹ Michael J. Astrue, the current Commissioner of Social Security, took office as of February 12, 2007. Pursuant to Fed. R. Civ. P. 25(d)(1), he is automatically substituted as Defendant for his predecessor in office, Jo Anne B. Barnhart, who had been named as defendant in Plaintiff's Complaint.

² The case was reassigned to the undersigned on August 6, 2007.

of the absence of evidence in the record “of any specific limitations in plaintiff’s physical functioning caused by multiple sclerosis or orthopaedic issues” during the period of Plaintiff’s disability insurance coverage (*id.* 6), the ALJ’s determination that Plaintiff “could perform her past work as a library clerk” during that time was supported by substantial evidence (*id.* 7-8).

A district court reviewing a magistrate judge’s report and recommendation addressing a dispositive motion “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also Donahue v. Global Home Loans & Fin., Inc.*, No. 05-CV-8362, 2007 WL 831816, at *1 (S.D.N.Y. Mar. 15, 2007). Under 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, parties may submit objections to the magistrate judge’s report and recommendation. The objections must be “specific” and “written,” Fed. R. Civ. P. 72(b)(2), and must be made “[w]ithin 10 days after being served with a copy of the recommended disposition,” *id.*; *see also* 28 U.S.C. § 636(b)(1), plus an additional three days when service is made pursuant to Fed. R. Civ. P. 5(b)(2)(C)-(F), *see* Fed. R. Civ. P. 6(d).

Where a party submits timely objections to a report and recommendation, the district court reviews *de novo* the parts of the report and recommendation to which the party objected. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); *Donahue*, 2007 WL 831816, at *1. “However, where a party does not submit an objection, a district court need only satisfy itself that there is no clear error on the face of the record.” *Donahue*, 2007 WL 831816, at *1 (internal quotation marks omitted); *see also Eisenberg v. New England Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008) (The district court “may adopt those portions of the . . . report [and recommendation] to which no ‘specific written objection’ is made, as long as the factual and

legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law.” (quoting Fed. R. Civ. P. 72(b)(2)). “In addition, a party’s failure to submit an objection will waive that party’s right to challenge the report and recommendation on appeal.” *Donahue*, 2007 WL 831816, at *1.

Here, neither party has filed objections to Magistrate Judge Yanthis’s R&R. Thus, the Court has reviewed the R&R for clear error. Finding none, the Court adopts the R&R in its entirety.

Accordingly, it is hereby

ORDERED that the Report and Recommendation filed June 20, 2008 is ADOPTED in its entirety. It is further

ORDERED that Plaintiff’s motion for judgment on the pleadings is DENIED. It is further

ORDERED that the Commissioner’s cross-motion for judgment on the pleadings is GRANTED. It is further

ORDERED that the Clerk of the Court is respectfully directed to enter a judgment in favor of the Commissioner, terminate the pending motions (Dkt. No. 12), and close this case.

SO ORDERED.

Dated: November 18, 2008
White Plains, New York


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

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